

Introduced by Senator Dunn
(Principal coauthor: Assembly Member Spitzer)

February 20, 2003

An act to add Chapter 1.3 (commencing with Section 629) to Title 15 of Part 1 of the Penal Code, relating to investigative subpoenas.

LEGISLATIVE COUNSEL'S DIGEST

SB 609, as introduced, Dunn. Investigative subpoenas: violent felonies.

Existing law provides for certain formal criminal investigative procedures circumscribed by statute, including search warrants, grand jury proceedings, and special procedures for wiretapping orders and for administrative subpoenas for financial records. Existing law permits the head of any executive department of the state to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony pertinent or material to any inquiry, investigation, hearing, proceeding, or action conducted in any part of the state.

This bill would authorize the chief executive officer of a law enforcement agency, or a specified designee, to issue subpoenas for the production of certain records from a public utility, bank, credit union, savings association, telephone company or other provider of electronic communication services when investigating a violent felony. The subpoenas would be authorized to require only specified limited responses. This bill would provide for an enforcement mechanism for subpoenas that are not obeyed through the superior court. This bill would allow the public utility, bank, credit union, savings association, telephone company or other provider of electronic communication services to charge a reasonable fee for compliance with these

subpoenas, and would provide criminal and civil immunity for good faith disclosures pursuant to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Chapter 1.3 (commencing with Section 629) is added to Title 15 of Part 1 of the Penal Code, to read:

CHAPTER 1.3. INVESTIGATIVE SUBPOENAS

629. (a) In any criminal investigation of a felony listed in subdivision (c) of Section 667.5, the chief executive officer of a law enforcement agency, or a command officer designated by him or her, may issue in writing and cause to be served a subpoena to a public utility, bank, credit union, savings association, telephone company or other provider of electronic communication services for the name and address of a person listed in the records of the customers of the public utility, bank, credit union, savings association, telephone company or other provider of electronic communication services.

(b) Except with regard to investigations of felonies listed in subdivision (c) of Section 667.5, and, with regard to those, only as provided in this chapter, nothing in this chapter shall be construed to alter privacy rights or interests.

629.1. (a) For a subpoena issued pursuant to Section 629 to be valid, it must contain all of the following:

(1) The social security number of the person about whom the subpoena is made, if it is known or available to the issuing authority.

(2) A written certification that a crime report has been filed that involves a violent felony and that the subpoena is made to further a criminal investigation being conducted by the law enforcement agency

(3) The signature of the chief executive officer of the law enforcement agency or the command officer he or she has designated. As used in this chapter, “command officer” means an officer in charge of a department, division or bureau of the law enforcement agency.

(b) A subpoena issued pursuant to Section 629 shall require compliance prior to a specified date listed prominently in the subpoena.

(c) A subpoena issued pursuant to Section 629 may do only one or both of the following:

(1) Require a public utility, bank, credit union, savings association, telephone company or other provider of electronic communication services to disclose the business records of a customer which may be relevant to an authorized law enforcement inquiry.

(2) Require a custodian of records to give a statement or an affidavit concerning the production and authentication of these records or information.

629.2. (a) If a public utility, bank, credit union, savings association, telephone company or other provider of electronic communication services subpoenaed pursuant to this chapter refuses to produce any records required by subpoena, the chief executive officer or command officer of the law enforcement agency may petition the superior court in the county in which the matter is pending for an order compelling the entity to comply with the subpoena.

The petition shall set forth all of the following:

(1) That due notice of the time and place for the production of the records or the giving of authentication was given.

(2) That the entity was subpoenaed in the manner prescribed in this chapter.

(3) That the entity failed to produce the records required by the subpoena or to authenticate records before the officer named in the subpoena, or both.

(b) Upon the filing of the petition, the court shall enter an order directing the public utility, bank, credit union, savings association, telephone company or other provider of electronic communication services to appear before the court at a specified time and place and then and there show cause why the entity has not produced or authenticated the records as required by the subpoena. A copy of the order shall be served upon the entity. If it appears to the court that the subpoena was properly issued by the chief executive officer or command officer of the law enforcement agency, the court shall enter an order that the public utility, bank, credit union, savings association, telephone company or other provider of

1 electronic communication services appear before the officer
2 named in the subpoena at the time and place fixed in the order and
3 produce, authenticate, or produce and authenticate the required
4 records. Upon failure to obey the order, the public utility, bank,
5 credit union, savings association, telephone company or other
6 provider of electronic communication services shall be dealt with
7 as for contempt of court.

8 629.3. The public utility, bank, credit union, savings
9 association, telephone company or other provider of electronic
10 communication services may charge a reasonable fee for any
11 administrative expense related to the disclosure.

12 629.4. A disclosure made in good faith pursuant to this
13 chapter does not give rise to any criminal liability or any action for
14 damages for the disclosure of the name and address of a customer
15 by a public utility, bank, credit union, savings association,
16 telephone company or other provider of electronic communication
17 services.

